

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3475 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIPBHAI ASANDAS (ASANMAL) BHATIYA

Versus

STATE OF GUJARAT

Appearance:

MR MB FAROOQUI for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 24/08/98

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. K.T. Dave,
Ld. AGP for the respondents.

2. Heard. The petitioner has been running cinema in the name and style of Paradise Cinema at Porbandar. The petitioner's cinema was checked by the prescribed authority and show cause notice dated 29/1/1996 was

issued. The petitioner replied the show cause notice on 10/10/1996 while also giving clarifications with regard to the questions raised in the show cause notice. After hearing the petitioner the said authority passed order directing the petitioner to pay Rs.3317-12 with 100% penalty and also to pay Rs.1,000/- by way of compounding of the offence u/S. 18 (B) of the Gujarat Entertainment Tax Act, 1977. In this manner the petitioner was directed to pay Rs. 7634.24. The revisional authority proposed to take the said order in suo-motu revision and issued show cause notice to the petitioner. The petitioner filed his reply dated 21/11/1997. The revisional authority has, however, passed impugned order dated 27/3/1998 whereby the petitioner was reassessed for the purpose of entertainment tax to the extent of Rs.1,29,062/- inclusive of penalty and amount u/S. 18(B) of the Act. This order passed by the revisional authority has been subjected to challenge before this Court inter-alia on the ground that the revisional authority has failed to consider the decision of this Court rendered in S.C.A. No. 9693 of 1996 decided on 16/12/1996. As per the said decision, submits Mr. Farooqui, the period under the previous checking could not have been considered by the revisional authority for the purpose of assessment in question. On that short question the matter was remanded to the revisional authority for considering the revision strictly on merits. In the present case previous surprise checkings were made between 13/10/1993 to 7/11/1995 and no irregularities were found through such checkings. The submission therefore, is that this period could never have been considered by the revisional authority for the purpose of assessment in question.

3. Mr. K.T. Dave, Ld. AGP for the respondents submits that the revisional authority might be directed to consider the aforesaid aspect of the matter in the light of the decision rendered in S.C.A. No. 9693 of 1996 decided on 16/12/1996.

4. Bearing in mind the facts of the case and the fact that the revisional authority will require to consider the aforesaid decision of this Court, following direction is issued :-

The impugned order Annexure-D dated 27/3/1998 passed by the respondent Government through the Deputy Secretary is hereby quashed and set aside and the said authority is directed to re-hear the revision application and decide the matter in

accordance with law after considering the aforesaid decision of this Court, within a period of two months from the date of receipt of writ of this direction. The petitioner shall be heard before deciding the revision application on all the grounds including the ground referred to hereinabove.

Rule made absolute accordingly. No order as to cost.

* * *

PVR sca347598j.